become final is "a conclusive determination of the jurisdiction of the court." In determining whether an order of approval has become final, it must be borne in mind that the statutory procedure governing approval of a Chapter X petition contemplates the possibility of more than one order approving a petition. Under Section 141, the judge may approve a voluntary petition immediately upon its filing; and under Sections 142 and 143, the judge may approve an involuntary petition (1) if the debtor has not filed an answer controverting any material allegations of the petition or (2) if such an answer has been filed but the judge determines the issues adversely to the debtor. After initial approval, Section 137 permits the filing of an answer by others;[4] and if such an answer is filed, the judge again has to determine under Section 144 whether the petition should be approved.

In the instant case, while the debtor filed an answer pursuant to Section 136, neither petitioner nor anyone else filed an answer pursuant to Section 137. Even assuming that petitioner's motion to dismiss could be deemed an answer pursuant to Section 137, it was in effect withdrawn by her concession that the amended answers and consents of the debtors rendered her position "moot" (p. 4, *supra*). The time to file an answer pursuant to Section 137 expired on

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[4] See 6 Collier, *Bankruptcy* ¶6.06, p. 1016 (14th ed., 1969 Revision): "For example, an involuntary petition may be subjected to contravening answers *seriatim* by the debtor, one or more creditors, one or more indenture trustees and one or more stockholders."

June 28, 1968, the date the court had set for a hearing under Section 161 of the Act, and accordingly no further approval pursuant to Section 144 of the Act was required. Under these circumstances, the only approval of the petition was that of April 26, 1968, which became final after the time to file an answer pursuant to Section 137 had expired and after the time to appeal from that order had expired. *In re Technical Marine Maintenance Co.*, 169 F. 2d 548, 553 (C.A. 3); *Country Life Apartments, Inc. v. Buckley*, 145 F. 2d 935, 938 (C.A. 2); *In re V-I-D*, 177 F. 2d 234, 236 (C.A. 7). As these cases hold, Section 149 precludes any subsequent attack on the order approving the petition.[5]

2. Once the debtor has consented to an involuntary petition for reorganization, there is no need to satisfy the additional requirements of an involuntary petition.[6] *In re Central Forging Co.*, 101 F. 2d 736 (C.A.

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[5] This, of course, includes a collateral attack, as petitioner attempted in an Indiana state court.

> Section 149 is designed to foreclose all direct or collateral attack upon jurisdiction or venue, once the period for appeal from an order approving a petition has expired. [S. Rep. 1916 on H.R. 8046, 75th Cong., 3d Sess. (1938), p. 27.]

Even before an order of approval has become final, the district judge has jurisdiction under Section 116(4) to "enjoin or stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor."

[6] This was apparently recognized by petitioner in stating, after the trusts had filed their amended answers consenting to the reorganization, that her position had become "moot" (p. 4, *supra*). In any event, this statement, which in effect withdrew the objection in the district court, prevents that objection from

3); *In re Park Beach Hotel Bldg. Corp.*, 96 F. 2d 886, 891 (C.A. 7); *In re Palisades-on-the-Desplaines*, 89 F. 2d 214, 217 (C.A. 7). And see *In re Hudson & Manhattan R.R. Co.*, 229 F. 2d 616, 619 (C.A. 2); *Moore* v. *Linahan*, 117 F. 2d 140 (C.A. 2). Accordingly, the questions petitioner raises as to whether the certificate holders were creditors with claims "liquidated as to amount and not contingent as to liability"—a requirement of Section 126 for an involuntary petition—are not involved.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1970.

being considered on appeal. See *Clark Bros. Co.* v. *Portex Oil Co.*, 113 F. 2d 45 (C.A. 9); *In re Technical Marine Maintenance Co.*, *supra*, 169 F. 2d at 553.

APPENDIX

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 68-B-447 and No. IP 68-B-609

IN THE MATTERS OF: AMERICAN NATIONAL TRUST AND REPUBLIC NATIONAL TRUST, DEBTORS.

In Proceedings for the Reorganization of a Corporation

ORDER STAYING SUIT IN HOWARD CIRCUIT COURT

This cause came before the Court upon the petition of the debtor to stay Cause Number 37538 in the Howard Circuit Court entitled Neva M. Shanklin, on behalf of herself and all other holders of shares of Beneficial Interest in the American National Trust and Republic National Trust of Indiana vs. Frank L. Gregory and Paul D. "Tony" Hinkle, as Trustees of the American National Trust and The Republic National Trust, and the Court being duly advised in the premises FINDS that said action is a collateral attack upon the proceedings pending in this court and is a suit against the trustees of the debtor in their capacities as Trustees and, as such, constitutes an interference with the proceedings in this court.

It Is Therefore Ordered that Cause Number 37538 in the Howard Circuit Court entitled Neva M. Shanklin, on behalf of herself and all other holders of shares of Beneficial Interest in the American National Trust and Republic National Trust of Indiana vs. Frank L. Gregory and Paul D. "Tony" Hinkle, as Trustees of the American National Trust and The Republic National Trust, be and it hereby is stayed and that no further proceedings be had thereon until further order of this court.

Entered this 6th day of November, 1968.

JAMES E. NOLAND,
Judge, United States District Court.

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